

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

original Application 867 of 2003

Jabalpur, this the 22nd day of June, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

Ishwar Saran aged about 71 years,
S/o Shri Rameshwar Saran,
Member(Retired) Railway Claims
Tribunal, Bhopal, resident of
E-7/637, Arera Colony Bhopal(M.P.)
462016

APPLICANT

(By Advocate - Shri L.S. Rajput)

VERSUS

Union of India, represented by:

1. The Secretary, Ministry of Railways
(Railway Board) Rail Bhawan,
New Delhi.
2. The Financial Advisor & Chief
Accounts Officer, Central
Railway, Mumbai CST(Maharashtra)
3. The Chairman,
Railway Claims Tribunal,
New Delhi.

RESPONDENTS

(By Advocate - Shri M.N. Banerjee)

O R D E R (Oral)

By Madan Mohan, Judicial Member -

By filing this OA, the applicant has sought the following main reliefs :-

"(a) Quash the impugned orders(ANN A-1 to ANN.A-6) holding the same to be void-ab-initio, arbitrary & illegal.

(b) Direct the respondents to restore the monthly pension of the applicant @ Rs.1965/- P.M. & make payment of difference amount with interest

(c) Direct the respondents not to order any recovery in the name of over payment towards pension or in any other name.

(d) Quash any other order or orders if any passed against the interest of applicant, during the pendency of this application".

2. The brief facts of the case are that the applicant joined the Indian Railway Traffic Service on 19.12.1957 and took voluntary retirement on 7.11.1989 and later was appointed as Member of Railway Claims Tribunal, Bhopal on



8.11.1989. On attaining 62 years of age, the applicant retired on 16.8.1984 in the capacity of Member (Tech.), RCT, Bhopal. The applicant was sanctioned additional pension of Rs. 292/- per month on the basis of 5 years as per Rule 8(2) of RCT Act, 1987. The applicant's pension was revised vide PPO dated 28.10.1998 from Rs. 292/- per month to Rs. 605/- per month with effect from 16.8.1994 i.e. from the date of retirement. The applicant was drawing his pension regularly, according to his revised PPO. In June, 2003 the respondent No. 2 informed the applicant that as per Railway Board's letter dated 12.7.2001, the revision of pension shall be at the rate of Rs. 4716/- for each completed year of service w.e.f. 1.1.1996, but in the case of the applicant he has rendered only 4 years 9 months and 8 days service. Accordingly, the completed year of service should have been taken as 4 years only, whereas the same has been taken as 5 years. The respondents ordered to make recovery of over-payment of Rs. 45,489/- after waiting for two months and revised the pension downward vide PPO dated 11/18.6.2003 retrospectively w.e.f. 1.1.1996 @ 1572/- per month. Aggrieved by the action of the respondents he preferred a representation to respondent No. 2 which was rejected vide order dated 9.9.2003 without taking into consideration the provision of Section 9 of the Railway Claims Tribunals Act, 1987, which clearly stipulates that pension & other retirement benefits can not be varied to the disadvantage of the Chairman, Vice Chairman & Members of the Tribunal after the appointment. Later the respondent No. 2 advised the Manager- State Bank of India, Bhopal to start recovery of alleged over payment made. In the meantime the applicant has also submitted a representation relying on the judgment of the Ernakulam Bench in a similar case. The respondents finally rejected the representation of the applicant vide order



dated 25.11.2003. Aggrieved by this the applicant has filed this OA claiming theaforesaid reliefs.

3. Heard the learned counsel for the parties and perused the records carefully.

4. It is argued on behalf of the applicant that he retired from service on 16.3.1994, on attaining the age of superannuation in the capacity of Member (Tech.) RCT, Bhopal. As per the recommendation of the Central Pay Commission, the pension of the applicant was revised and fixed at the rate of Rs. 1965/- per month w.e.f. 1.1.1996. The applicant was drawing his pension regularly according the revised PPO. But the respondent No. 2 later informed the applicant in June, 2003 that as per Railway Board's letter dated 12.7.01 the revision of pension shall be at the rate of Rs. 4716/- for each completed year of service w.e.f. 1.1.1996, but in the case of the applicant he has rendered only 4 years 9 months and 8 days service. Hence, the completed year of service should have been taken as 4 years only whereas the same has been taken as 5 years. Thereafter, the respondents ordered for recovery of Rs. 45,489/- against the applicant. According to Section 9 of the Railway Claims Tribunals Act, 1987 the pension and other retirement benefits can not be varied to the disadvantage of the Chairman, Vice Chairman & Members of the Tribunal after their appointment. The respondents rejected the claim of the applicant. The learned counsel for the applicant further argued that a similar case has been decided by the Ernakulam Bench of the Tribunal in the case of N. Gopalakrishnan Vs. Union of India & Ors. in OA No. 621/2000, decided on 31st January, 2001.

5. In reply the learned counsel for the respondents argued that the Rule 8 of RCT Rules, 1989 was amended viae



Central Govt. Gaz. Notification dated 11.4.1996, retrospectively giving effect from the date RCT came into existence (i.e. 8.11.1989). According to the amended rule 8 of RCT Rules, pension shall be calculated at the rate of Rs. 1450/- per annum for each completed year of service and shall not exceed Rs. 4,000/- per mensem. As such while revising pension only completed year of service should be reckoned for calculating pension and part thereof should be ignored as per Railway Board's letter dated 27.3.1997. When the pension of the applicant was revised in 1998 as per GSR dated 11.4.96 neither the GSR No. 185 nor the above two letters i.e. letter dated 27.3.1997 and 25.9.1997 were available with RCT/BPL. Hence the respondents had simply advised that the pension of the applicant may be calculated @ Rs. 1450/- per annum for completed year of service and revised PPO was issued. In the absence of the letters, his pension was revised on the same lines as his pension was originally fixed i.e. considering service rendered for the part of the year also and worked out to Rs. 605/- w.e.f. 16.8.1994 i.e. from the date of retirement of the applicant. Similarly, when his pension was revised as per Vth Pay Commission, pension payable w.e.f. 1.1.1996 was worked out to Rs. 1695/- and revised PPO dated 16.9.2002 was issued. In the case of the applicant, he has not completed entire tenure of 5 years and no period of EOL has been deducted applying CCS Pension Rules. As regards the judgment of the Ernakulam Bench of the Tribunal, the learned counsel for the respondents argued that in that case the applicant has completed 5 years service and there is no provision in RCT rules, 1989 to deduct the period of EOL availed by the applicant. The respondents in that case rejected the claim of the applicant thereby stating that the applicant has not completed the 5 years service as he has availed 40 days EOL

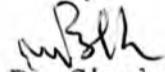
But in the present case the applicant has only completed 4 years 9 months and 9 days. Thus, the said case of Ernakulam Bench does not apply to the present case.

6. After hearing the learned counsel for both the parties and on careful perusal of the records, we find that the applicant was appointed as Member in Railway Claims Tribunal, Bhopal on 8.11.1989. He retired as Member (Tech.) on attaining the age of superannuation on 16.8.1994. Section 9 of the Railway Claims Tribunals Act, 1987 clearly stipulates that pension & other retirement benefits cannot be varied to the disadvantage of the Chairman, Vice-Chairman & Members of the Tribunal after their appointment. Admittedly the applicant retired on 16.8.1994 and the amendment ~~made~~ made in the Rule 8 ~~was~~ was notified on 11.4.1996, giving effect from the date Railway Claims Tribunal came into existence (i.e. 8.11.1989). We find that there is no such amendment made in Section 9 of the RCT Act, 1987. We have perused the order passed by the Ernakulam Bench of the Tribunal and we find that the same is applicable to the present OA. The judgment passed in the OA No. 621/2000, squarely covers this OA. In the judgment of the Ernakulam Bench, the Tribunal has observed that the amendment of the rule by No. N.GSR 185 dated 11.4.1996, deleting "or a part thereof" cannot affect the applicant's tenure in view of the provisions contained in proviso to Section 9 of the RCT, Act. Therefore, even if it is assumed that the service of the applicant as contended by the respondents in their reply statement was only for a period of 4 years 10 months and 20 days, the applicant would be entitled to get pension for the entire period of 5 years.



7. In view of the aforesaid, we are of the considered opinion that the applicant is entitled to get the revised pension reckoning his entire service tenure of 5 years. Accordingly, the Original Application is allowed and the impugned orders from Annexure A-1 to Annexure A-6 are quashed and set aside, declaring that the applicant is entitled for monthly pension at the rate of Rs. 1965/- P.M., taking into account his 5 years tenure in the Tribunal. The respondents are directed to refix the monthly pension of the applicant for his service as Member (Tech.) of the Railway Claims Tribunal at Rs. 1965/- P.M. with effect from the date of his retirement, within a period of two months from the date of receipt of copy of this order. The respondents are also directed to pay the arrears resulting therefrom and if any amount is recovered from the applicant the same be refunded to the applicant, within the aforesaid period. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

"SA"

पूर्णांकन सं. ओ/न्या..... अमरात्मा, दि.....
प्रतिलिपि अवौि..... दे करु ।
(1) सचिव, उच्च न्यायालय दे करु ।
(2) अमेरिका श्री/दीप्ति दे करु । AS Rayal
(3) भद्रकाली श्री/दीप्ति दे करु । Mr Banerjee
(4) कंपताल, कोडा, अमरात्मा न्यायालय
सूचना एवं आवश्यक कार्यालय देतु । 4-8-04
ट्रॉफ अप रजिस्ट्रेशन

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